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Repository Citation

Ilhyung Lee, *Revisiting the Olympic Tie*, 29 Marq. Sports L. Rev. 227 (2018)
Available at: <https://scholarship.law.marquette.edu/sportslaw/vol29/iss1/7>

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ESSAYS

REVISITING THE OLYMPIC TIE

ILHYUNG LEE*

In the annals of sport, if there is a list of iconic ties (or draws), the tie in the women's 100-meter event at the 2012 U.S. Olympic Trials in track and field must be included. At the conclusion of that race, after confusion gave way to official results, there was a photo finish for third place—a tie to the *one-thousandth* of a second. Because the American team could send only the top three finishers in the event to the Summer Olympics that year, there would have to be a method to determine the third-place winner. Unbelievably, race officials had no tiebreaker rules. What transpired in the ensuing days included a series of events that should remind of the legal process. The governing body of the sport (acting like a legislature) met to deliberate, and issued procedures to address the situation (which read like a legal directive, raised questions, and required interpretation). In due course, the third-place winner was determined. Throughout the entire process, the possibility of an action at law challenging the decisions was ever present. This Essay revisits the drama.

The U.S. Olympic Trials in track and field were held at historic Hayward Field in Eugene, Oregon to determine the American qualifiers for the Olympics in London. In the women's 100 meters, as in most track and field events, the top three (and only three) finishers would qualify for the Olympics. Broadcast on NBC television, the on-air announcers offered the following commentary as the sprinters crossed the finish line:

Announcer 1¹: It will be [Carmelita] Jeter to win it, [Tianna] Madison in second and close for third.

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1. This appears to be the play-by-by announcer Al Trautwig.

Announcer II²: [*With replay of the finish in slow motion onscreen*] . . . Here's the end. Look on the right side. [*Jeneba Tarmoh was in lane 1, Allyson Felix in lane 2*] Who gets the third spot? . . .

Announcer I: It's the torso that counts, of course.^[3]

Announcer II: And it hasn't come up on the computer yet so clearly they are looking at that photo. And it is Jeneba Tarmoh who outleaves her training partner. Eleven-oh-seven [11.07 seconds] for both . . . Tarmoh comes and pulls a huge upset by one thousandth of a second.

Announcer I: . . . [T]he last spot on the U.S. Olympic team was decided by a thousandth of a second. Tarmoh over Felix.⁴

The scoreboard at Hayward Field posted Tarmoh's third-place time of 11.067 seconds and Felix's fourth-place time of 11.068.⁵

The play-by-play commentator then summarized the results, saying prematurely, "*Official* results in the women's hundred meters final,"⁶ as a graphic appeared onscreen:

2012 U.S. OLYMPICS TRIALS
WOMEN'S 100M
RESULTS – FINAL⁷

1. CARMELITA JETER	10.92
2. TIANNA MADISON	10.96

2. This is the color commentator and analyst for the broadcast.

3. The applicable rules of USATF provided that a competitor's time in a track event is "taken from the flash/smoke of the pistol or approved apparatus to the moment at which any part of the competitor's body (i.e., the 'torso,' as distinguished from the head, neck, arms, hands, legs, or feet) reaches the perpendicular plane of the nearer edge of the finish line." USA TRACK & FIELD, 2012 COMPETITION RULES R. 165(4), at 78 (Feb. 14, 2012).

4. *2012 U.S. Olympic Team Trials Track & Field* (NBC television broadcast June 23, 2012). The broadcast is available at Yaboiyaboi, *2012 US Women's Track & Field 100m Olympic Trials*, YOUTUBE (July 2, 2012), <https://www.youtube.com/watch?v=GDjsGbxQozg>.

5. See Tim Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, SPORTS ILLUSTRATED, June 30, 2016, <http://olympics.si.com/olympics/2016/06/30/2016-us-olympic-track-and-field-trials-allyson-felix-jeneba-tarmoh-dead-heat>; Tim Layden, *Felix-Tarmoh Runoff in Jeopardy*, SPORTS ILLUSTRATED, July 1, 2012, <http://www.si.com/more-sports/2012/07/01/felix-tarmoh100runoffnewser>.

6. *2012 U.S. Olympic Team Trials Track & Field*, *supra* note 4 (emphasis added).

7. *Id.*

3. JENEBA TARMOH	11.07
4. ALLYSON FELIX	11.07

The commentator continued: “Tarmoh over Felix. They had the same time in hundredths. Just by a thousandth of a second”⁸ The events that followed underscored the difference between third and fourth places, purportedly separated by 1/1,000th of a second. Tarmoh was interviewed on-track for the television broadcast.⁹ She also did a victory lap while waving the U.S. flag,¹⁰ and participated in a news conference with the other Olympic qualifiers, Jeter and Madison.¹¹ Meanwhile, “Felix fumed in the media zone and gave an emotional interview in which she said ‘fourth is the worst.’”¹²

But pause. The results announced during the broadcast were actually preliminary and *unofficial*. Approximately forty-five minutes after the race, the final official results were posted: Jeter in first; Madison in second; and a dead heat tie for third place between Tarmoh and Felix, with a time of “11.07 . . . [11.068].”¹³ Roger Jennings, the photo finish coordinator for the race, “considered the best at what he does,”¹⁴ explained what transpired behind the scenes, in one video interview given shortly after the official results were

8. *Id.*

9. Reporter: “Jeneba, this is your first Olympic Trials and now you’re headed to London. What do you think about this?” Tarmoh: “I am very excited. I’m so happy” *Id.*

10. See Mary Pilon, *2012 London Games: For 2 U.S. Runners, Dead Heat Controversy Simply Will Not Die*, N.Y. TIMES, July 12, 2012, http://www.nytimes.com/2012/07/13/sports/olympics/2012-london-games-for-2-us-runners-dead-heat-controversy-simply-will-not-die.html?_r=0.

11. See Sam Borden, *2012 Olympics – A U.S. Berth at Stake, and No Way to Break the Tie*, N.Y. TIMES, June 24, 2012, <http://www.nytimes.com/2012/06/25/sports/olympics/2012-olympics-allyson-felix-and-jeneba-tarmoh-100-meter.html>; Pilon, *supra* note 10.

12. Borden, *supra* note 11. See Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5 (“Felix walked out of sight of the crowd and wept openly.”); Tim Layden, *USATF Has No One to Blame But Itself for Botched 100-meter Runoff*, SPORTS ILLUSTRATED, July 2, 2012, <http://www.si.com/more-sports/2012/07/02/jeneba-tarmoh-allyson-felix-100-meter-runoff> (“Felix was seen sobbing outside the media area and then spoke emotionally of her disappointment.”).

13. *USA Track & Field - Results*, USA TRACK & FIELD, <http://www.usatf.org/Events---Calendar/2012/U-S--Olympic-Team-Trials-TF/Results.aspx> (last visited Dec. 13, 2018) (“Women’s 100 Meter Dash Final”) (brackets in original).

14. Tom Goldman & Linda Wertheimer, *100 Meter Runoff Canceled, Tarmoh Pulls Out of Race*, NPR (July 3, 2012), <http://www.npr.org/2012/07/03/156174919/100-meter-runoff-canceled-tarmoh-pulls-out-of-race>. See Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5 (describing Jennings as “among the best in the world at his job.”).

posted,¹⁵ and another within nine days after that.¹⁶ Jennings explained that two cameras were placed to take pictures of the finish line: one on the crowd's nest (the "outside" camera) and another in the infield (the "inside" camera).¹⁷ The technology was state-of-the-art, with the cameras capable of capturing 3,000 frames per second.¹⁸ Usually, the outside camera reveals separation and is determinative, but here, the athletes' arms blocked the views of their torsos.¹⁹ Jennings then looked at the results from the inside camera, and given Tarmoh's arm position, determined that her torso hit the finish line just ahead of Felix's.²⁰

Jennings based his conclusion "on an educated guess,"²¹ a "subjective interpolation."²² This determination led to the results posted on the stadium's scoreboard,²³ meaning triumph for Tarmoh, and heartbreak for Felix. But Jennings' work was not complete. He explained: "I immediately wanted to get a referee in there."²⁴ "I actually protested my own call."²⁵ Four referees came in, and "we re-read it."²⁶ Instead of relying on the subjective view of what Jennings determined was a torso, the referees looked "at the clear black and white example of right exactly when the visual part of the torso crossed the finish line."²⁷ Jennings related, "[W]e all decided that what we saw visually was a dead heat. At that point we called it a dead heat for third."²⁸ Jennings stated that although he stood by his decision of placing Tarmoh over Felix, which he said was consistent with his previous calls in similar situations, he

15. Letsrundotcom, *Timer Roger Jennings on Allyson Felix, Jeneba Tarmoh 100m Tie at Olympic Trials*, YOUTUBE (June 23, 2012), <https://www.youtube.com/watch?v=NfAshSZ4OH8>.

16. TheBSTC, *Tie in Olympic Trials Photo Finish*, YOUTUBE (July 2, 2012), <https://www.youtube.com/watch?v=vk5HAWNr0ws>.

17. Letsrundotcom, *supra* note 15.

18. TheBSTC, *supra* note 16. See Sam Borden, *When a Dead Heat Is More Than a Photo Finish*, N.Y. TIMES, June 24, 2012, http://london2012.blogs.nytimes.com/2012/06/24/when-a-dead-heat-is-more-than-a-photo-finish/?_r=0.

19. Letsrundotcom, *supra* note 15.

20. *Id.* "[Jennings] interpolated that Tarmoh's chest had hit the line first, using two visible data points from the images." Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5. See Pilon, *supra* note 10.

21. Letsrundotcom, *supra* note 15.

22. TheBSTC, *supra* note 16.

23. *Id.*

24. Letsrundotcom, *supra* note 15.

25. TheBSTC, *supra* note 16. See Letsrundotcom, *supra* note 15 ("In essence I protested it myself.").

26. TheBSTC, *supra* note 16.

27. *Id.*

28. Letsrundotcom, *supra* note 15. See TheBSTC, *supra* note 16 (Jennings: It "was determined to be a dead heat.").

agreed with the decision to call for a dead heat.²⁹ In a later interview with *Sports Illustrated*, Jennings characterized the process somewhat differently, saying that the referees “overruled” him, even though he agreed with their decision.³⁰

In retrospect, it appears that the referees’ determination took into account the legal ramifications of their decision. Bob Podkaminer, one of the referees, did not disagree with Jennings’ interpolation, “but worried that in such a high-profile setting as the Olympic trials, it might be challenged, possibly even in court.”³¹ Podkaminer said, “At some point, I might be asked to stand up and justify what I decided.”³² Note also Jennings’ lay analysis of Podkaminer’s approach to the matter at hand: “[Podkaminer’s] rationale was good, the way he approached it almost like a lawyer. Can you prove beyond a *shadow of a doubt* that it was not a tie?”³³ This raises the question of the standard of proof to be applied in an action where the plaintiff-athlete challenges the governing body’s decision. Jennings’ standard would exceed even the reasonable doubt standard applied in criminal prosecutions.

With the state-of-the-art technology unable to distinguish a third-place runner, there was a tie. There could not be “co-winners” for third place, since it was the last spot for the Olympics in London. The tie had to be broken. But USA Track & Field (USATF), the sport’s governing body, had no procedures for breaking the tie.³⁴ A spokesperson for USATF acknowledged that with no

29. TheBSTC, *supra* note 16.

30. Jennings explained, “In the end, my read was subjective. The involvement of the torso is always subjective to some degree. They [USATF] went with what they could actually see. I was overruled, and I certainly signed off on their decision.” Layden, *USTAF Has No One To Blame*, *supra* note 12. Four years later, Jennings said that he would make the same call again, Tarmoh over Felix for third place:

I’ve even looked at that photo from time to time, over the last four years I would call it the same way, the outside shoulder-torso lean for Tarmoh, with Felix fourth Even though I felt I did my job, Pod[kaminer] did his job by overruling me.

Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

31. Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

32. *Id.*

33. *Id.* (emphasis added).

34. That there were no tiebreaker procedures came as a surprise to even the president of USA Track & Field, Stephanie Hightower. “You would think that after the fiasco involving me in 1984, there would be a procedure in place,” she said. Philip Hersh, *USOC Gets Final Say in Track Tiebreaker*, CHI. TRIB., June 24, 2012, <https://www.chicagotribune.com/sports/ct-xpm-2012-06-24-chi-usoc-gets-final-say-in-track-tiebreaker-20120624-story.html>. Hightower was involved in a three-way tie for second place in the 1984 Olympic Trials in the 100-meter hurdles, with all three having a time of 13.13 seconds (the first-place finisher’s time was 13.12 seconds). RICHARD HYMANS, *THE HISTORY OF THE UNITED STATES OLYMPIC TRIALS—TRACK & FIELD 206-07* (2008), <http://www.usatf.org/statistics/champions/OlympicTrials/HistoryOfTheOlympicTrials.pdf>. Hightower lost out after thirty minutes of deliberations by officials. Hersh, *supra*.

tiebreaker rules, “[t]his was an evolving situation.”³⁵ The situation led to “days of drama,”³⁶ an “odd chapter” in the history of the sport,³⁷ and “one of the most unusual and embarrassing periods in the recent history of U.S. track and field.”³⁸

The governing body went into an emergency legislative session (my phrasing) for a deliberative process that included consultation with constituent groups, “USATF officials and representatives of the Olympic track & field athlete community,”³⁹ including Olympic athletes (though none connected with the race in question).⁴⁰ Also present at the session was a representative of the United States Olympic Committee, which gave final approval of the procedure reached.⁴¹ Nearly twenty-four hours after the end of the race on the track, USATF issued a statement announcing the tiebreaker procedure. A USATF spokesperson stated that “[e]verything was considered and this was determined to be the most fair.”⁴² The statement began:

USA Track & Field and the United States Olympic Committee announce the following procedures to be applied to the women’s 100 meters and any other running event for which there may be a dead heat for third place at the 2012 U.S. Olympic Team Trials – Track & Field.

....

In case of a tie, the following procedure shall be used for breaking a tie for the final qualifying slot in a running-event final in which a U.S. National Team or Olympic Team is being selected:

1. If either athlete declines his or her position on the National Team/Olympic Team, that athlete will be named

35. Pilon, *supra* note 10. At the press conference where the spokesperson made the announcement, a reporter asked, “Are the athletes aware?” The spokesperson responded, after a brief pause, “Probably not because it was just determined.” Lestrundotcom, *USATF Announces Allyson Felix and Jeneba Tarmoh Have Tied in the 100 at the US Olympic Trials*, YOUTUBE (June 23, 2012), <https://www.youtube.com/watch?v=5QHhOZKFDnU>.

36. Pilon, *supra* note 10.

37. Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

38. Tim Layden, *Tarmoh Revisits Dead-Heat 100, a Race She Says Was ‘Taken’ from Her*, SPORTS ILLUSTRATED, July 25, 2012, <http://www.si.com/more-sports/2012/07/25/jeneba-tarmoh-100-meter-dead-heat-2012-olympics>.

39. USA Track & Field, *Dead-Heat Procedures Announced*, USATF, June 24, 2012, <http://www.usatf.org/News/Dead-heat-procedures-announced.aspx>.

40. Borden, *supra* note 11.

41. *Id.*

42. *Id.*

the alternate and the other athlete will assume the final available position.

2. If neither athlete declines their^[43] position, they will be given the option to determine the tie-breaker via coin toss or by run-off.

a. If both athletes choose the same option, that option will be utilized as the tie-breaker.

b. If the athletes disagree on the tie-breaker, the tie will be broken by a run-off.

c. If both athletes refuse to declare a preference regarding the method between a run off and coin toss in regards to how the tie is broken, the tie will be broken by coin toss.⁴⁴

The procedures also provided a protocol for the runoff (mainly to determine the time of the runoff) and a protocol for the coin toss (composed in 385 words and presented in six paragraphs).⁴⁵ The former also included the statement that should lightning strike twice and “the run-off also result[] in a dead heat, the tie will be broken by a coin toss.”⁴⁶

The tiebreaker provision contained in the USATF statement *sounds of law* in that it: mandates action (“the following procedure *shall* be used”) (“shall” appears fourteen more times); contemplates contingencies (“*If . . .*”) (appearing seven times in all); and provides additional procedures in furtherance of the subject action (“Run-off protocol”; “coin toss protocol”).⁴⁷ Like many provisions at law, the statement also raises questions of interpretation. There is no explicit deadline for the athletes to declare their preference, likely because both Tarmoh and Felix were entered in the 200-meter event for the following week.⁴⁸ The consequences of an untimely declaration are not set out. In addition, as one commentator pointed out, “There seems to be no provision to break the tie if *one* athlete [not both] refuses to express a choice, although that could, in one reading, be construed as Option B.”⁴⁹ Tarmoh was apparently told of USATF’s response if this scenario were to occur: “They said, if you don’t

43. Proof readers and text editors will note that the possessive form of “athlete” is “their” here, but “his” or “her” in the previous paragraph.

44. USA Track & Field, *supra* note 39.

45. *Id.*

46. *Id.*

47. *Id.*

48. See Borden, *supra* note 11.

49. Layden, *supra* note 38.

make a decision, you give up your spot.”⁵⁰ Had USATF taken this position, it would be tantamount to *deeming* certain actions to be a withdrawal, under the circumstances.

Another observer expressed, “As for what happens if one or both of the sprinters declines to participate in a runoff, that possibility isn’t specifically covered in the rules set out by USAT&F.”⁵¹ Or what result, where one athlete, after agreeing to a runoff, changes her mind, and then demands a coin toss? Or would this scenario then come under 2(b), mandating a runoff? What if both athletes initially agreed to a runoff under 2(a), then change their minds and request a coin toss? Would USATF go forward with the coin toss (with both athletes having chosen “the same option” under 2(a)), or demand that the athletes honor their initial selections? What if either athlete, having declared an intention to participate in a runoff, then declares that she is unwilling or unable to participate in the runoff, due to injury, or risk of injury? “In fact, Allyson Felix was quoted as saying if she lines up for the race and doesn’t feel quite right, she’s out She doesn’t want to risk injury this close to London.”⁵²

Some in the media criticized USATF for putting the decision on the shoulders of the athletes.⁵³ Perhaps there is a view that the governing body—like governing legal institutions—should decide, enact, and impose, rather than burden the affected parties with a decision between unchartered options. Other observers weighed in on what they thought was the only, logical, best solution – a runoff.⁵⁴ But one wonders if these commentators would urge the same runoff option for distance races – for example, in the 10,000 meters, or the marathon.

On July 1, 2012—seven days after the dead heat procedures were announced, and the day after the completion of the 200-meter finals, in which Felix won and Tarmoh finished fifth—Tarmoh, Felix, their managers, and track officials met for a two-hour meeting.⁵⁵ Felix indicated that she wished to have

50. Layden, *Felix-Tarmoh Runoff in Jeopardy*, *supra* note 5.

51. Mark Memmott, *Update: Sprinters’ Runoff Is All Off*, NPR: THE TWO WAY (July 2, 2012), <http://www.npr.org/sections/thetwo-way/2012/07/02/156116737/sprinters-runoff-may-be-all-off>.

52. Tom Goldman & Renee Montagne, *100 Meters Runoff to Decide 3rd Place Finisher*, NPR (July 2, 2012), <http://www.npr.org/2012/07/02/156099956/100-meters-runoff-to-decide-3rd-place-finisher>.

53. Bryan Burwell, *Coin Flip Shouldn’t Decide Spot on Olympic Team*, ST. LOUIS POST-DISPATCH, June 26, 2012, https://www.stltoday.com/sports/columns/bryan-burwell/coin-flip-shouldn-t-decide-spot-on-olympic-team/article_6ce83305-b97b-586c-9031-dfe7e6693663.html; Goldman & Wertheimer, *supra* note 14; Tony Manfred, *Allyson Felix, Jeneba Tarmoh Tie in 100m at US Olympic Trials*, BUS. INSIDER (June 25, 2012), <http://www.businessinsider.com/felix-tarmoh-us-olympic-trials-2012-6>. As a practical matter, there was no need for USATF to impose its will toward a runoff, if both athletes wished a coin toss, under 2(a). USA Track & Field, *supra* note 39.

54. *E.g.*, Borden, *supra* note 11; Burwell, *supra* note 53; Hersh, *supra* note 34; Manfred, *supra* note 53.

55. Pilon, *supra* note 10.

the runoff.⁵⁶ At that point, Tarmoh was practically forced to choose between the runoff or to withdraw.⁵⁷ If she formally agreed to a runoff, that would be the result, per 2(a). If she chose a coin toss, the result would still be a runoff, under 2(b). If Tarmoh refused to make a choice, as discussed above, perhaps the refusal would have qualified under 2(b), a runoff. It was during the meeting that she reportedly raised the question of the photo finish evaluator's initial decision that she had captured third place.⁵⁸ Rebuffed, Tarmoh agreed to the runoff,⁵⁹ and USATF made the announcement that the match race would take place the next day. The runoff, in a winner-takes-all format (here, the final spot for the Olympics), would have mass appeal and generate interest in the sport.⁶⁰

Tarmoh later changed her mind, and decided to withdraw. She explained that she felt pressured to accept the runoff option, and that she was “not at peace” with her earlier decision.⁶¹ Moreover, given Jennings' original determination, she felt slighted.⁶² USATF issued another statement announcing Tarmoh's decision, which included her email message transmitted by her agent on the morning of the scheduled runoff:

I Jeneba Tarmoh have decided to decline my 3rd place position in the 100m dash to Allyson Felix. I understand that with this decision I am no longer running the 100m dash in the Olympic Games and will be an alternate for the event. As an alternate I understand that I will be asked to run if another 100m runner decides not to for personal reasons, and/or on the 4x100m relay.⁶³

56. *Id.*

57. *Id.*

58. Layden, *supra* note 38.

59. Pilon, *supra* note 10.

60. The race was to be broadcast on live national television during prime time. See *No Runoff: Jeneba Tarmoh Gives Up Olympic Spot in 100 to Allyson Felix*, CBS (July 2, 2012), <http://www.cbsnews.com/news/no-runoff-jeneba-tarmoh-gives-up-olympic-spot-in-100-to-allyson-felix/>; see also Goldman & Wertheimer, *supra* note 14.

61. *No Runoff: Jeneba Tarmoh Gives Up Olympic Spot in 100 to Allyson Felix*, *supra* note 60. After the runoff was called off, Tarmoh was “derided,” and “viciously attacked” on Internet message boards. Layden, *supra* note 38; Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

62. Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

63. USA Track & Field, *Tarmoh Withdraws from Women's 100M Olympic Team*, USATF (July 2, 2012), <http://www.usatf.org/News/Tarmoh-withdraws-from-women-s-100m-Olympic-Team.aspx>. Tarmoh's email was included in a statement from USATF announcing her decision to withdraw. The statement ends, “We are disappointed that Jeneba has changed her mind regarding her position on the Olympic Team,” Hightower said. “We all worked hard to reach a consensus on the tiebreaker, but we know that Allyson, Carmelita and Tianna will represent Team USA well.” *Id.*

Observers noted that Tarmoh's message was of "a distinctly judicial sounding release."⁶⁴ Indeed, Tarmoh's later statements suggest the possibility of a civil action to (re)claim her third-place finish:

- "In my heart of hearts, I just feel like I earned the third spot. I almost feel like I was kind of robbed."⁶⁵
- "I don't accept what happened. They said, 'You won,' and took it away."⁶⁶
- "I'm always going to remember my first Olympics as the year when my 100-meter spot was taken away from me."⁶⁷

In Tarmoh's arsenal for a civil action would be Jennings' initial determination that Tarmoh won third place and his later statements to *Sports Illustrated*: "I did my job. I called what I saw If I went back and read that photo 100 times, I would call it the same way every time."⁶⁸ Indeed, the timing company was prepared to be a co-defendant or to be deposed in an action against USATF.⁶⁹ Tarmoh ultimately decided not to pursue legal recourse.⁷⁰

USATF was roundly criticized for failing to have tiebreaker rules and the manner in which it handled the matter after the dead heat.⁷¹ The entire episode

64. Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12. See Goldman & Wertheimer, *supra* note 14 (describing Tarmoh's statement as "somewhat legal sounding language.").

65. Layden, *Felix-Tarmoh Runoff in Jeopardy*, *supra* note 5; Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12. See Memmott, *supra* note 51; *Jeneba Tarmoh Concedes 100m London Olympic Spot to Allyson Felix*, GUARDIAN, July 2, 2012, <https://www.theguardian.com/sport/2012/jul/02/jeneba-tarmoh-allyson-felix-london-olympics>; *No Runoff: Jeneba Tarmoh Gives Up Olympic Spot in 100 to Allyson Felix*, *supra* note 60.

66. Pilon, *supra* note 10.

67. Layden, *supra* note 38; Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

68. Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12. See TheBSTC, *supra* note 16 ("My picking of Lane 1 Tarmoh over Felix was very consistent with what I've done a hundred times over. . . . I still see lane 1 beating lane 2 . . .").

69. See Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12.

70. See *id.* In an action, USATF would likely have raised the argument that Tarmoh waived any right to object to the USATF procedures following the dead heat because she did not file a timely protest after the official results were posted. USATF regulations required that any protest by an athlete be filed within thirty minutes after the announcement of the results. USA TRACK & FIELD, *supra* note 3, R. 146.2, 146.8, at 65-66. See Pilon, *supra* note 10. For her part, Tarmoh would have urged that when the official results were posted, she was in drug testing. A USATF spokesperson stated that it is the responsibility of the athlete, coach, or manager to wait and watch for official results and file timely protests. See *id.*

71. See Borden, *supra* note 11; see also Burwell, *supra* note 53; Goldman & Wertheimer, *supra* note 14; Hersh, *supra* note 34; Manfred, *supra* note 53; Mark Sappenfield, *Why Did Jeneba Tarmoh Pull Out of 100-Meter Runoff?*, CHRISTIAN SCI. MONITOR, July 2, 2012, <https://www.csmonitor.com/USA/Sports/2012/0702/Why-did-Jeneba-Tarmoh-pull-out-of-100-meter-runoff>; David Steele, *USA Track & Field Controversy Doesn't Pass the Smell Test*, SPORTING NEWS (July 3, 2102),

led to “a national controversy.”⁷² The event sheds light on the importance of tiebreakers, the need to deliberate over a fair tiebreaking procedure in advance and have it in place, especially considering the possible stakes for the participants, and the potential consequences when no tiebreaker provisions are present.

An epilogue. With the experience of the 2012 trials in hand,⁷³ USATF announced tiebreaker procedures for the 2016 Olympic trials, over a year before the scheduled events.⁷⁴ The new tiebreaker rules, also sounding of law, address

<http://www.sportingnews.com/olympics-news/3828538-jeneba-tarmoh-allyson-felix-100-meter-controversy-photo-finish-usa-track-field>; *Jeneba Tarmoh Concedes 100m London Olympic Spot to Allyson Felix*, *supra* note 65. Perhaps no critique was more blistering than that by Tim Layden of *Sports Illustrated*:

- “Astoundingly, USATF had no tiebreaking procedure in place, an embarrassing circumstance” Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12.
- “[T]he path to setting up Monday’s runoff has been a carnival of ill-preparedness and bureaucratic sloth on the part of USATF” Layden, *Felix-Tarmoh Runoff in Jeopardy*, *supra* note 5.
- “[I]t was both unfortunate and impossible to ignore the combination of personal drama and systemic bungling, a daily train wreck of inaction by the USATF.” Layden, *USATF Has No One To Blame But Itself for Botched 100-meter Runoff*, *supra* note 12.
- “Both USATF President Hightower and CEO Max Siegel . . . enacted a stunning display of non-leadership throughout the week of the dead heat controversy, failing to take control of the story, if not the actual situation.” *Id.*
- “The women’s 100-meter dead heat disaster of 2012 seems like an absurd memory, an acid trip of uncertainty, ineptitude and melodrama that could never possibly have happened at such an important place as the Olympic trials. But it most certainly did happen.” Layden, *2016 U.S. Olympic Track, Field Trials: Felix and Tarmoh*, *supra* note 5.

72. Pilon, *supra* note 10.

73. “Now, a track spokesperson says the organization has learned through this the importance of having all your procedures in place. There’s the implication that there will be rules changes and that this kind of delay and indecision won’t happen again.” Goldman & Montagne, *supra* note 52. See Borden, *supra* note 11 (quoting Ato Boldon, NBC broadcaster and four-time Olympic sprinter from Trinidad and Tobago, “I guarantee that there will be something put in there now.”).

74. The relevant provisions read as follows:

1. For all running events, with the exception of the marathon and 50K race walk;
 -
 - b. If all affected athletes agree to a run-off, the run-off will be held within the most time allowed before the roster deadline, but not later than 72 hours, after the last day of the selection competition. The athlete’s decision to compete in the run-off, must be communicated in writing to USATF within two hours from which the last athlete was notified. Failure to do so will be construed as a decision to decline participation in a run-off.
2. Any athlete that agrees to run-off, and then changes his/her mind after the two-hour deadline, forfeits any rights to the higher place.
3. If all affected athletes do not agree to do a run-off, the tie shall be broken by lot. . . .

many of the questions raised (above) about the hurriedly prepared rules after the tie in the women's 100 meters in 2012.

It should be noted that “declaring a tie in major races—in which the finish line cameras capture up to 3,000 frames per second—is rare.”⁷⁵ This raises the question of the extent to which the sport's governing body (like legislatures) should devote resources to address situations that are not likely to occur. Or perhaps it is the very function of the governing body to do so, given the consequences where no procedures are in place.

4. Any athlete who refuses to participate in the tie-break procedure forfeits any rights to the higher place.

....

Marathon/50km Race Walking:

Athletes participating in a World Championship Team Trials - Marathon, a World Championship Team Trials - 50km Race Walk, an Olympic Team Trials - Marathon, or an Olympic Team Trials - 50km Race Walk will be assigned a rank based upon their place-finish in that event.

For the Race Walk, if there is a tie for any rank position that affects team selection, the tie shall be resolved, in order, by awarding the higher rank to the athlete with the fewer red cards during the event.

If that does not resolve the tie, it shall be broken by lot.

For the Marathon, if there is a tie for any rank position that affects team selection, the tie shall be broken by lot.

Any athlete who refuses to participate in the tie-break procedure forfeits any rights to the higher place.

USA Track & Field, *Athlete Selection Procedures, 2016 Olympic Games*, USATF (Apr. 27, 2015), <http://www.usatf.org/usatf/files/4d/4d053a7b-8295-483a-b3f8-3fa05b5e5a19.pdf> (“Attachment C – USATF Tie Break Procedures”).

75. Borden, *supra* note 11.